

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICORECEIVED & FILED
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BERNABE TEJADA BATISTA, et al.,

CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, P.R.

Plaintiffs

CIVIL 97-1430(JAG)

v.

JOSE FUENTES AGOSTINI, et al.,

Defendants

OPINION AND ORDER

I. FACTUAL BACKGROUND

Plaintiff, Bernabé Tejada Batista, brought this action under 42 U.S.C. § 1983, claiming the defendants violated rights guaranteed to him by the First and Fourteenth Amendments of the United States Constitution. The defendants are former Attorney General of Puerto Rico, José Fuentes Agostini; Lydia Morales, Director of the Special Investigation Bureau (S.I.B.) of the Puerto Rico Department of Justice (D.O.J.); Domingo Álvarez, Director of the Corruption and Organized Crime Investigation Division (C.O.C.I.D.) of the S.I.B.; Ernesto Fernández, presently Interim Director of the C.O.C.I.D., but who at the time relevant to this suit was the Supervisor of the Homicide Section of the C.O.C.I.D.; Cristobal Irizarry, Supervisor of the Stolen Vehicle Section of C.O.C.I.D.; Antonio Franco, Supervisor of the Intelligence Section of the C.O.C.I.D.; and Miguel Gierbolini, District Attorney assigned to the S.I.B., who at the time relevant to this suit answered to the Director of the S.I.B. and the Attorney General.

Beginning in 1987, plaintiff was employed by the D.O.J. as an assistant agent for the S.I.B. Plaintiff was on military leave, including Operation Desert Storm service, from early

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3 1991 to January 14, 1994.¹ On or about June 14, 1993, plaintiff was arrested and
4 convicted of "Abuse," a felony under the Puerto Rico Domestic Abuse Prevention and
5 Intervention Act. See 8 P.R. Laws. Ann. § 601 (1999); 33 P.R. Laws Ann. § 3040 (1999).
6 Such conviction was subsequently set aside by the Puerto Rico Superior Court after
7 plaintiff completed a rehabilitation program.

8 Upon returning to work in January 1995, plaintiff was assigned to the Homicide
9 Section of the C.O.C.I.D., but several months later he was transferred to the section that
10 investigates corruption among government employees. As part of his duties in this section,
11 plaintiff infiltrated a Dominican drug-trafficking gang as an undercover agent. Plaintiff
12 alleges that during the course of said investigation, he witnessed some instances of
13 corruption within the S.I.B. He claims to have observed co-workers misappropriating
14 public funds and allowing illegal drug transactions to go unpunished. As a result of such
15 actions, plaintiff alleges that his life was put in jeopardy and that he had to move his family
16 out of Puerto Rico to ensure their safety. On May 19, 1995, plaintiff alerted defendant
17 Lydia Morales of the corruption situation by way of a memorandum, as well as through co-
18 defendants Domingo Álvarez and Antonio Franco. Plaintiff claims that no action was
19 taken.

20 On December 10 and 11, 1996, "El Vocero" newspaper published two articles
21 detailing the allegations of corruption made by plaintiff. Simultaneously, on December 11,
22 1996, an alleged anonymous caller revealed plaintiff's conviction for domestic abuse to the
23 S.I.B. As soon as defendant Fuentes Agostini was appointed Attorney General, and
24 supposedly based on plaintiff's conviction, co-defendant Gierbolini recommended that
25 plaintiff's employment be terminated. On February 27, 1997, co-defendant Fuentes

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28 ¹This factual background roughly follows Judge Fusté's summary of March 17, 2000.

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3 Agostini signed the termination letter, which was received by plaintiff on March 4, 1997.
4 Although co-defendants have at all times claimed that the reason for the dismissal was the
5 domestic abuse conviction, plaintiff contends that the reason for termination was the
6 articles published by "El Vocero." Plaintiff argues that his dismissal violated the Freedom
7 of Speech rights guaranteed to him by the First and Fourteenth Amendments of the United
8 States Constitution.

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II. PROCEDURAL HISTORY

10 On June 29, 1998, United States District Judge José A. Fusté issued an opinion and
11 order denying a number of motions filed by the co-defendants. (Docket No. 66.) The
12 opinion and order denied co-defendant Fuentes Agostini's motion to dismiss (Docket No.
13 18), co-defendant Lydia Morales' motion for summary judgment (Docket No. 32.), and co-
14 defendants Álvarez, Fernández, Franco and Irizarry's motion for summary judgment.
15 (Docket No. 41.) Defendant Lydia Morales moved the court for reconsideration of the
16 denial of her motion for summary judgment (Docket No. 69), which the court also denied.
17 Subsequently, all defendants moved for reconsideration of the June 29, 1998 opinion and
18 order arguing that recent First Circuit caselaw mandated a different outcome. The court
19 again denied defendants' motion. (Docket No. 86.) Tejada Batista v. Fuentes Agostini,
20 87 F. Supp. 2d 72, 78 (D.P.R. 2000) (Fusté, J.)

21 On July 12, 2000, the case was assigned to newly appointed United States District
22 Judge Jay García Gregory. (Docket No. 89.) On July 10, 2001, co-defendants Álvarez,
23 Fernández, Franco, Irizarry, and Gierbolini filed a "Supplemental Motion for Summary
24 Judgment." (Docket No. 117.) On the same day, at a settlement conference, the court
25 stated that it would not entertain any more motions for summary judgment. (Docket No.
26 118.) Nevertheless, on August 17, 2001, co-defendant Fuentes Agostini again moved for
27 summary judgment. (Docket No. 122). On August 28, 2001, the motion was stricken
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from the record. (Docket No. 126.) The following day co defendant Fuentes Agostini again moved for reconsideration. (Docket No. 129.) On September 4, 2001, the parties consented that the case be tried before a United States magistrate judge. (Docket No. 131.) Both the supplemental motion for summary judgment and the motion for reconsideration were denied by me. (See Docket Nos. 138 and 142.) Trial was then set for October 29, 2001. (Docket No. 140.)

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Co-defendants Morales, Álvarez, Fernández, Franco, Irizarry and Gierbolini filed a notice of appeal of Judge Fusté's opinion and order denying their motion for summary judgment as well as from my order denying their supplemental motion for summary judgment. (Docket No. 146.) The proceedings were stayed. The court of appeals denied review on the grounds that the appeal of Judge Fuste's June 29, 1998's opinion and order was untimely filed and that the appeal of my interlocutory order presented an issue that was not appealable. Tejada Batista v. Morales, No. 01-2664, slip op. at 1 (1st Cir. Aug. 13, 2002) (Docket No. 153). The case is now before the court on defendant Fuentes Agostini's urgent motions requesting an order² stating that his motion is denied on the merits for appeals purposes. (See Docket Nos. 141 and 163.)³

III. ANALYSIS

Defendants generally argue that as a matter of law the case should be dismissed because they are shielded from liability pursuant to the doctrine of qualified immunity. They claim that plaintiff was discharged due to his conviction for domestic violence.

²The discussion in the instant opinion also disposes of co-defendant's Morales, Álvarez, Fernandez, Franco, Irizarry and Gierbolini's motion requesting an order. (Docket No. 139.)

³Fuentes-Agostini argues that the consent to the exercise of jurisdiction by this magistrate judge was given on the condition that I would rule on the pending motions.

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3 Therefore, their actions were objectively reasonable since dismissal was required both under
4 state and federal law. Plaintiff argues to the contrary claiming that the reason for his
5 dismissal was the information published in "El Vocero" in violation of his clearly
6 established constitutionally protected right to freedom of speech. For the reasons set forth
7 below, I find that summary judgment on qualified immunity grounds is inappropriate, since
8 there are factual issues to be resolved by the trier of fact.

9 The doctrine of qualified immunity shields government officials from civil liability
10 when they perform discretionary functions as long as their conduct does not violate clearly
11 established statutory or constitutional rights of which a reasonable person would have
12 known. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). In defining the limits of this
13 good-faith defense, the Supreme Court has stated that "[w]here an official could be
14 expected to know that certain conduct would violate statutory or constitutional rights, . . .
15 a person who suffers injury caused by such conduct may have a cause of action." Id. at 819
16 (footnote omitted). "The contours of the right must be sufficiently clear that a reasonable
17 official would understand that what he [or she] is doing violates that right." Acevedo-
18 García v. Vega-Monroig, 204 F.3d 1, 10 (1st Cir. 2000) (quoting Anderson v. Creighton,
19 483 U.S. 635, 640 (1987)). Thus the court needs to determine (1) whether the
20 constitutional right allegedly involved is a clearly established one; and (2) whether a
21 reasonable official in the same circumstances would have understood that his or her
22 conduct violated that right. See Fletcher v. Town of Clinton, 196 F.3d 41, 45 (1st Cir.
23 1999). In other words, once it is determined that the alleged conduct violates a clearly
24 established constitutional right, the court must still determine whether an objectively
25 reasonable official with the information that he or she possessed at the time would have
26 believed that his or her conduct was lawful. See McBride v. Taylor, 924 F.2d 386, 389 (1st
27 Cir. 1991).

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3 It has already been held that the question of co-defendants' motivation in
 4 terminating plaintiff from employment is one for the trier of fact to determine. (See
 5 Opinion and Order of June 29, 1998, Docket No. 66.); see also Tejada Batista v. Fuentes
 6 Agostini, 87 F. Supp. 2d at 78. If the dismissal is found by the jury to be an act of
 7 retaliation against plaintiff exercising his First Amendment rights, that would, more likely
 8 than not, take co-defendants outside the ambit of qualified immunity protection. If on the
 9 other hand, the trier of fact determines that his conviction for domestic abuse is the
 10 motivating factor for plaintiff's termination, they are not only protected by qualified
 11 immunity, they are simply not liable under section 1983. In other words, the
 12 determination of whether co-defendant violated clearly established constitutional rights
 13 cannot be answered without the factual determination by the trier of fact of co-defendant's
 14 real motivation to terminate plaintiff. This objectively reasonable inquiry is highly fact
 15 specific, Swain v. Spinney, 117 F.3d 1, 9-10 (1st Cir. 1997), and in the context of qualified
 16 immunity, summary judgment is precluded when disputed material facts make pre-trial
 17 solution impossible. Kelley v. Laforce, 288 F.3d 1, 7 (1st Cir. 2002).

18 It is now time for this vintage case to stop aging.

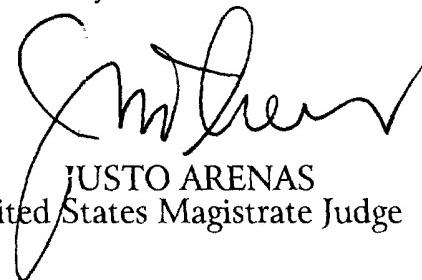
19 IV. CONCLUSION

20 In view of the foregoing, I reaffirm my denial of co-defendant Fuentes Agostini's
 21 motion for reconsideration of the order striking his motion for summary judgment. This
 22 order also disposes of Docket Nos. 129, 139, 141 and 163. Trial is to begin as scheduled.
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24 SO ORDERED

25 In San Juan, Puerto Rico, this 23d day of February, 2003.

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JUSTO ARENAS
United States Magistrate Judge